

# United States District Court, Northern District of Illinois

Name of Assigned Judge or Magistrate Judge	Milton I. Shadur	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 3409	DATE	5/23/2003
CASE TITLE	USA ex rel. Homer Hanrahan vs. Donald Snyder		

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

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## DOCKET ENTRY:

(1)	<input type="checkbox"/>	Filed motion of [ use listing in "Motion" box above.]
(2)	<input type="checkbox"/>	Brief in support of motion due _____.
(3)	<input type="checkbox"/>	Answer brief to motion due _____. Reply to answer brief due _____.
(4)	<input type="checkbox"/>	Ruling/Hearing on _____ set for _____ at _____.
(5)	<input type="checkbox"/>	Status hearing[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(6)	<input type="checkbox"/>	Pretrial conference[held/continued to] [set for/re-set for] on _____ set for _____ at _____.
(7)	<input type="checkbox"/>	Trial[set for/re-set for] on _____ at _____.
(8)	<input type="checkbox"/>	[Bench/Jury trial] [Hearing] held/continued to _____ at _____.
(9)	<input type="checkbox"/>	This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to] <input type="checkbox"/> FRCP4(m) <input type="checkbox"/> Local Rule 41.1 <input type="checkbox"/> FRCP41(a)(1) <input type="checkbox"/> FRCP41(a)(2).
(10)	<input checked="" type="checkbox"/>	[Other docket entry] Enter Memorandum Opinion and Order. For the reasons stated in this memorandum opinion and order, this Court dismisses the Petition sua sponte.
(11)	<input checked="" type="checkbox"/>	[For further detail see order attached to the original minute order.]

	No notices required, advised in open court.		number of notices	Document Number  7
	No notices required.		MAY 28 2003	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.		date docketed	
	Notified counsel by telephone.		docketing deputy initials	
	Docketing to mail notices.		5/27/2003	
	Mail AO 450 form.		date mailed notice	
	Copy to judge/magistrate judge.		SN	
SN	courtroom deputy's initials	Date/time received in central Clerk's Office	mailing deputy initials	

**DOCKETED**  
MAY 23 2003

No. 03 C 3409

Homer Hanrahan ("Hanrahan"), who is serving a term of 50 to 100 years for the 1974 murder of his wife,<sup>1</sup> has submitted a 28 U.S.C. §2254<sup>2</sup> Petition in which he "does not attack petitioner's conviction, but the fact or duration of imprisonment" (Petition ¶1). For the reasons stated in this memorandum opinion and order, this Court dismisses the Petition sua sponte.<sup>3</sup>

<sup>2</sup> All further references to Title 28's provisions will simply take the form "Section--."

3 Just why the Petition arrived on this Court's desk is somewhat unclear. When Hanrahan filled out the Administrative Office preprinted form of Section 2254 petition on April 2, 2003, he listed the Central District of Illinois as the place for filing, and the Petition does bear an April 7 "Filed" stamp from another District Court (presumably the Central District, although the name of the Clerk has been blacked out from the "Filed" stamp). More than six weeks then elapsed before the Petition was received in the Clerk's Office of this District Court on May 21. Because the Petition has nothing to do with Hanrahan's conviction more than a quarter century ago and because he is in custody at Dixon Correctional Center, the proper venue should really be in the Western Division of this Northern District of Illinois rather

Hanrahan is far from a stranger to the federal habeas corpus system. From the printout of his prior federal litigation efforts provided by this District Court's Staff Attorney Office, he has previously launched (in addition to a number of 42 U.S.C. §1983 actions that he has filed claiming constitutional violations) these Section 2254 actions in this Northern District of Illinois (all except the last, which was indeed filed in the Western Division, having been brought in this Eastern Division):

Case No. 82 C 1890 (see 547 F.Supp. 721 (N.D. Ill. 1982))

Case No. 86 C 244 (see 695 F.Supp. 372 (N.D. Ill. 1988), 896 F.2d 241 (7<sup>th</sup> Cir. 1990), 748 F.Supp. 603 (N.D. Ill. 1990) and 933 F.2d 1328 (7<sup>th</sup> Cir. 1991))

Case No. 86 C 4199 (see 650 F.Supp. 239 (N.D. Ill. 1986))

Case No. 96 C 50292 (see 1997 WL 148051 (N.D. Ill. Mar. 12))

Even though those earlier efforts raised different grounds for habeas relief from the subject matter of Hanrahan's newest filing, in this Court's view the current Petition still represents "a second or successive habeas corpus application" within the meaning of Section 2244(b). Some brief elaboration of that concept is required by way of explanation.

Walker v. O'Brien, 216 F.3d 626, 632-33 (7<sup>th</sup> Cir. 2000) has reconfirmed that "§2254 [is] the exclusive vehicle for prisoners

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than here in the Eastern Division. But given the delay that has already been encountered through no fault of Hanrahan's, this Court will deal with the matter rather than shipping it on and causing further delay.

in custody pursuant to a state court judgment who wish to challenge anything affecting that custody" (id. at 633). Consequently "when a prisoner begins in the district court, §2254 and all associated statutory requirements apply no matter what statutory label the prisoner has given the case" (id.). And the very fact that Section 2244(b)(1) and (2) (emphases added) refer both to "claim[s] presented in a second or successive habeas corpus application under section 2254 that was presented in a prior application" and to "claim[s] presented in a second or successive habeas corpus application under section 2254 that was not presented in a prior application" expressly confirms that the current Petition is "second or successive" even though Hanrahan's earlier efforts had raised entirely different grounds for habeas relief.

That being so, Section 2244(b)(3)(A) specifically requires Hanrahan to seek and obtain leave from our Court of Appeals to proceed with a current Petition before he can turn to this District Court to advance his claim. That then calls for dismissal of the Petition at this level of the judicial system without prejudice, and this Court so orders.

This opinion could well stop here. But because this Court is aware of some Court of Appeals opinions elsewhere that do not read the statutory language involving "second or successive" petitions in accordance with its literal terms (see, e.g., the

split opinion in Crouch v. Norris, 251 F.3d 720 (8<sup>th</sup> Cir. 2001)), a few words will be added as to the posture of the current Petition if a different view were to be taken of the Section 2244(b)(3) precondition requiring permission from the Court of Appeals.

Hanrahan's current filing attacks the claimed unconstitutional denial, for a full quarter century, of good conduct credits toward his required term in custody. Petition Attachment ¶26 is plain on that score:

Petitioner seeks the award of day-for-day good-conduct-credit for every day of incarceration since February 1, 1978, along with the retention of all statutory good time, and other good time credits already awarded.

But the assertion of any such claim at this time is clearly outlawed by the one-year statute of limitations established by Section 2244(d)(1). So even if the Petition were not subject to dismissal because of Hanrahan's failure to have satisfied the precondition established by Section 2244(b)(3), it would be barred in any event as too stale to meet the timing requirement of Section 2244(d)(1).

#### Conclusion

As mandated by Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, this Court has examined Hanrahan's Petition promptly upon its receipt. And because "it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to

relief in the district court" (id.), the Petition is dismissed summarily.

A handwritten signature in cursive script, appearing to read "Milton I. Shadur", is written above a horizontal line.

Milton I. Shadur  
Senior United States District Judge

Date: May 23, 2003